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July 6, 2010

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BY ECF

Hon. Nicholas G. Garaufis
United States District Judge
United States District Court for the Eastern
District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: **United States, et al. v. City of New York**
Civ. Action No. 07-cv-2067 (NGG) (RLM)

Dear Judge Garaufis:

I am writing on behalf of Plaintiffs-Intervenors to make two requests regarding the scheduling of the hearing on the validity of firefighter exam 6019, if more than one day of testimony is required. If the testimony of the Plaintiffs' and Defendants' experts -- Drs. Jones and Cline -- go beyond one day, which seems very possible, given the length and complexity of the reports, I would ask that we not reconvene on the 21st of July, but rather on the 22nd and/or 23rd, if those days are available to the Court. I make this request because I will be representing Plaintiffs-Intervenors at this hearing, but have long since been committed to attend the annual meeting of the 1199SEIU Hospital and Health Care Employees Pension and Benefit Funds on July 21st. I have represented these funds for the past twenty-five years and my attendance there is required.

The second request arises in connection with an affidavit being filed today by Dr. Joel P. Wiesen who, you will recall, was Plaintiffs' expert IO psychologist and statistician in the liability phase of this case. Dr. Wiesen is filing an affidavit attesting to the fact that the two different answer sheet formats used by the City in administering test 6019 had a statistically significant impact on test-takers' scores, which could have affected their placement on the eligibility list by hundreds of places and a difference between being hired and not being hired. This answer sheet factor was particularly relevant in the case of Hispanic test-takers who, on average, were affected

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significantly to the point where the difference in answer sheet format may have affected their ranks by five or six hundred places.

Dr. Wiesen's affidavit is being filed at this time because the City, although asked for the relevant data and information to do this analysis on March 11, 2010 - - long before expert reports were due - - did not provide the necessary information until June 30, 2010. This was after the disclosure issue came before the Special Master. Over the July 4th weekend, Dr. Wiesen's expert affidavit was prepared.

We expect Dr. Wiesen to testify in support of this affidavit, but he is scheduled to present papers in California on the 20th and 21st and will not be back in New York until July 22nd. He could testify on the 23rd or in the week of the 26th of July, as may be convenient to the Court. Thus, this (second) request for a date after the 22nd of July for Dr. Wiesen's testimony to be given.

Thank you for your consideration of these requests.

Respectfully yours,



Richard A. Levy

RAL:jos
Cc: Hon. Roanne L. Mann
Magistrate Judge
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